

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SONIA HOFMANN, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

DUTCH LLC, a California Limited
Liability Company; and DOES 1 through
100, inclusive,

Defendant.

Case No.: 3:14-cv-02418-GPC-JLB

**ORDER DENYING SECOND
MOTION FOR PRELIMINARY
APPROVAL OF PROPOSED CLASS
SETTLEMENT**

[ECF No. 38]

Before the Court is Plaintiff's Second Motion for Preliminary Approval of Class Settlement. ECF No. 38.

On June 23, 2016, the Court denied Plaintiff's initial Motion for Preliminary Approval of Class Settlement. ECF No. 37. The initial proposed settlement provided for: (1) \$20 e-gift certificates for the plaintiff class; (2) \$250,000 in *cy pres* awards; and (3) up to \$175,000.00 in plaintiff's attorney's fees with a clear sailing provision attached. The Court identified three problems with the proposed settlement, namely: (1) the e-gift certificates effectively constituted coupons because they required Class Members to pay out of their own pocket before they could redeem them, since while the face value of the e-gift certificates was \$20, the average price of Defendant's jeans is \$205, and no item

1 was being sold by Defendant for less than \$58.80; (2) the *cy pres* award failed to meet the
 2 objective of the underlying statute of consumer protection, since the proposed charities
 3 do not promote consumer protection, but rather focus on “helping and meeting the needs
 4 of women in our society”; and (3) when considered in conjunction with the other
 5 provisions of the proposed settlement, the clear sailing provision “created at least a
 6 danger of collusion during the settlement negotiations which is not refuted by the record.”
 7 *Id.* at 9–15. The Court permitted the parties an additional sixty days to file a renewed
 8 motion for preliminary approval of class action settlement that cured the deficiencies
 9 identified by the Court. *Id.* at 15.

10 Parties have proposed a new settlement which provides for: (1) one denim tote bag
 11 (\$128 value) and \$20 e-gift certificates for the plaintiff class; (2) \$250,000 in *cy pres*
 12 awards, to the same charities as proposed in the initial settlement; and (3) up to
 13 \$175,000.00 in plaintiff’s attorney’s fees with the same clear sailing provision attached.

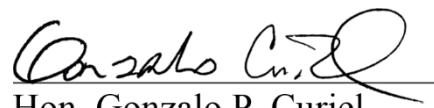
14 *See* ECF No. 38, Ex. 1. In other words, the only difference in the new proposed
 15 settlement is the addition of the denim tote bag. Parties have not rectified the other
 16 deficiencies with the proposed settlement identified by the Court. For instance, with
 17 respect to the *cy pres* award, the motion states, “[Defendant] has been made aware of
 18 Ninth Circuit legal authority that requires a sufficient nexus between the charitable
 19 purpose of the charity and the objectives of the underlying statutes (i.e., consumer
 20 protection statutes in this Action) but also notes that its consumer demographic is mostly
 21 women.” ECF No. 38 at 6. However, this exact argument was considered and rejected by
 22 the Court in its previous order. *See* ECF No. 37 at 13 (“The parties argue that the
 23 charities benefit the class members because “Defendant has indicated that the recipient of
 24 the charitable contribution will be charities that concern women’s issues and have a
 25 nexus to California. Dutch makes women’s jeans This is consistent with the goal of
 26 donating to charities focusing on helping and meeting the needs of women in our
 27 society.” (Mot. Settl.16:4– 8.) However, Class Members are women who purchased jeans
 28 labeled “Made in USA” that contained foreign-made components; not abstract women

1 without a specific injury. The chosen charities do not promote consumer protection.”).
2 Similarly, the clear sailing provision remains unchanged.

3 Accordingly, the Court **DENIES** the Second Motion for Preliminary Approval of
4 Class Settlement. ECF No. 38. The Court will permit the parties an additional sixty (60)
5 days from the issuance of this Order to file another renewed motion for preliminary
6 approval of class action settlement that cures the deficiencies identified in this Order.

7 **IT IS SO ORDERED.**

8 Dated: August 16, 2016


9 Hon. Gonzalo P. Curiel
10 United States District Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28